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Phoenix, Arizona 85007

Robert R. Corbin

January 24, 1984

The Honorable Robert Duber, II
Gila County Attorney
1400 East Ash Street
Globe, AZ 85501

Re: I84-015 (R83-156)

Dear Mr. Duber:

We have reviewed the opinions set forth in your letter dated November 9, 1983 to the Superintendent of the Globe Unified School District concerning the propriety of selling an abandoned school site to the City of Globe for services instead of for cash. Your opinion is revised as follows.

The facts, as we understand them, are that the City would like to provide fire and police protection and use of city parks in exchange for an abandoned school site.

Our legislature has provided a specific method for the utilization of the proceeds from the sale of school property. A.R.S. § 15-1102. Subject to certain limitations,¹ such funds may be used for maintenance and operation or for capital

1. See A.R.S. § 15-1102.A (the proceeds may be used only if the district's outstanding bonded indebtedness is 7% or less of the current year's assessed valuation) and A.R.S. § 15-1102.E (the exemption from the revenue control limit may not exceed certain percentages).

The Honorable Robert Duber, II
January 24, 1984
Page 2

outlay for up to ten years. A.R.S. § 15-1102.B. Any excess monies are then used to reduce school district taxes. A.R.S. § 15-1102.I. In light of this specific regulation concerning how the proceeds from the sale of school property may be spent, we do not believe that the legislature intended to allow districts to accept services instead of cash in exchange for school property.

We note, however, that a district may accept goods and services in exchange for the lease or rental of school property if the property is used "for the recreational, educational, political, economic, artistic, moral, scientific, social or other civic purpose in the interest of the community." A.R.S. § 15-1105.A. Thus, the district could lease the property to the City in exchange for services if the property is used for one of those purposes.

Sincerely,

Bob Corbin
BOB CORBIN
Attorney General

BC:VBW:pd



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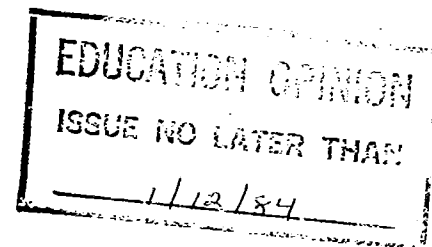
O P I N I O N

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TO: O. K. NUTTING
SUPERINTENDENT, GLOBE SCHOOL DISTRICT

FROM: ROBERT DUBER II
GILA COUNTY ATTORNEY

RE: Globe School District/City of Globe
Property Sale (Noftsgar Hill &
Dunbar Properties)

DATE: November 9, 1983

You have requested an opinion regarding the sale of an abandoned school site to the City of Globe.

Your request for opinion reflects that the School District has received approval by the voters to sell the property. You also indicated that, in lieu of cash, the City would provide indefinite fire and police protection to an elementary school in the District plus continued use of City parks for school athletic events.

The School District may sell abandoned school sites to a city without prior voter approval. A.R.S. §15-342(8); Garrett v. Tubac-Amado School District No. 5, 9 Ariz. App. 331, 451 P.2d 909 (1969).

In negotiating a sale of school property to a city, the School District must use its best business judgment in obtaining the fair market value for the property. Attorney General Opinion I80-36. Generally, the judgment of the Board is not an issue; however, the purchase terms you suggest--services for an indefinite term, in lieu of cash--are troublesome.

O. K. Nutting
Page 2
November 9, 1983

Article 9, Section 7 of the Constitution of the State of Arizona prohibits the school from making a gift to any entity. Article 10, Section 4, Constitution of the State of Arizona, is instructive in that title to public property vests only after the consideration is paid in full. (See Maricopa County Attorney School Opinion 79-24 appended to Attorney General Opinion I80-048.)

Therefore, title to the school property could not vest in the City until after the consideration was paid. If the consideration is to be received for an indefinite period of time there can never be full payment.

Furthermore, a school district cannot restrict the discretion of future boards without statutory authority to do so. School Dist. No. 69 of Maricopa County v. Altherr, 10 Ariz. App. 33, 458 P.2d 537 (1969). (Whether the same limitation would apply to the City, it is a matter for them to discuss with their counsel.)

Since I cannot find statutory authority for the District to bind future school boards to accept indefinite fire and police protection as well as use of public athletic fields, I must conclude that future boards could rescind the agreement with the City.

In conclusion, I suggest that the Board consider alternatives in the proposed sale, e.g. long-term lease (A.R.S. §15-342(8)) or exchange of land (A.R.S. §37-601).

A copy of this opinion is being sent to the Attorney General for his review pursuant to A.R.S. §15-122. If no action is taken by that office within 90 days, the opinion will be deemed confirmed.

